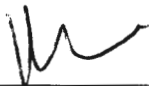


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 05/09/16**

<b>AGENDA ITEM:</b> T-Mobile SERS Facility Sublease	
<b>PREPARED BY:</b> Kevin Nielsen, Public Works Director	<b>DIRECTOR APPROVAL:</b> 
<b>DEPARTMENT:</b> Public Works, Facilities	
<b>ATTACHMENTS:</b> Nonexclusive Communication Site Sublease/License	
<b>BUDGET CODE:</b> 00100362.326000 Revenue	<b>AMOUNT:</b> \$20,000.00

**SUMMARY:**

T-Mobile West LLC requested and was granted approval by SERS to co-locate on their communication tower at the city-owned Highway 9 reservoir property on November 3<sup>rd</sup>, 2014. The City holds a Master Lease with SERS which grants the municipality exclusive right to enter into a sublease agreement with third-party co-locators. As such, T-Mobile is requesting that the City enter into a sublease agreement for a term commencing on June 1<sup>st</sup>, 2016 and expiring on September 30, 2017. This lease agreement will allow for two (2) additional five (5) year periods.

T-Mobile will pay the City a one-time siting fee of \$2,000.00 and annual base rent in the amount of \$18,000.00 for the initial term. The annual base rent shall be increased beginning with the lease year commencing on the third anniversary of the commencement date at a rate of 2.5%.

<b>RECOMMENDED ACTION:</b>
Staff recommends that Council authorize the Mayor to sign and execute the Nonexclusive Communication Site Sublease/License with the T-Mobile West LLC.

## NONEXCLUSIVE COMMUNICATION SITE SUBLEASE/LICENSE

THIS NONEXCLUSIVE COMMUNICATION SITE SUBLEASE/LICENSE ("License") is made by and between the City of Marysville, a municipal corporation and political subdivision of the State of Washington (hereinafter sometimes called "the City"), and T-Mobile West LLC, a Delaware limited liability company ("Licensee") this \_\_\_\_ day of \_\_\_\_\_, 2016.

### RECITALS

- I. The City has entered into a Communication Site Lease (the "Master Lease") with Snohomish County Emergency Radio System ("SERS"), a Washington Interlocal non-profit corporation.
- II. Under the Master Lease SERS has constructed a Communication Facility consisting of an antenna and related structures on the premises.
- III. Under the Master Lease, the City has the exclusive right to enter into sublease agreements or equivalent licensing agreements with third-party co-locators.
- IV. Licensee desires to enter into a sublease or license with the City on the terms and conditions of this Sublease/License.

### AGREEMENT

In consideration of the mutual covenants contained in this Sublease/License, the parties agree as follows:

1. **RECOGNITION AND ACKNOWLEDGMENT OF MASTER LEASE.** Unless specifically provided otherwise herein, Licensee hereby recognizes, acknowledges and agrees to be fully bound to the terms of the Master Lease and all exhibits, schedules, General Terms and Conditions and Site Standards, Conditions and Interference Mitigation Requirements referenced in, attached to or incorporated into the Master Lease.
2. **WARRANTY OF CITY.** The City hereby warrants that the Master Lease is in full force and effect as of the date of this Sublease/License. The City agrees to continue to perform in accordance with the terms and conditions of the Master Lease. Except for the foregoing warranty, the City makes no warranty to Licensee either express or implied, concerning the Master Lease, the premises, or the suitability of the premises and improvements for Licensee's intended use.
3. **NONEXCLUSIVE.** This is a nonexclusive Sublease/License and Licensee acknowledges and agrees that the site will be used by SERS as a communication facility and that the City may sublease or license the site and improvements to other sublessees/licensees to co-locate upon and use the premises and improvements for communications.

4. **MASTER LEASE.** The parties agree that Sublease/License is subject to the Master Lease between the City and SERS's and both parties' performance must be in compliance with the Master Lease. A copy of the Master Lease is attached as Exhibit B.

5. **PREMISES.** The City agrees to sublease or license to Licensee and Licensee agrees to lease or license from the City, upon the terms and conditions set forth herein, those areas and locations on the antenna, those related connectors, equipment, conduits, and lines, and those storage areas described in detail on Exhibit A ("the connection and storage areas" or the "premises"). The connection and storage areas are located on premises depicted in an Area Map and Site Plans with legal description set out in detail in Exhibit A hereto (the "Site"). The connection and storage areas are part of an antenna and structures on the site described in detail in Exhibit A (the "Equipment and Structures List"). By taking possession of the premises, Licensee accepts the premises in their existing condition. The City makes no representation or warranty with respect to the condition of the premises and site and the City shall not be liable for any latent or patent defect in the premises or the site.

6. **TERM.**

The initial term shall be commence on June 1, 2016 ("Commencement Date") and expire on September 30, 2017. Thereafter, the term shall be for total of up to five years, consisting of five one year periods of licensee's fiscal year of October 1, to September 30 of the following year. Licensee shall give City notice 60 days before the expiration of a fiscal year of renewal for the following fiscal year.

7. **OPTION TO EXTEND.** So long as the same is not prohibited by the Master Lease, the City has not exercised any rights to terminate this Sublease/License, and Licensee has faithfully and fully performed all terms and conditions of this Sublease/License, Licensee shall have the right to extend this Sublease/License on the following terms and conditions:

a. **Notice.** Between one hundred eighty (180) days before and one hundred fifty (150) days before the termination date, Licensee shall give the City written notice of its intent to extend this Sublease/License. Said notice shall be addressed and mailed in accordance with paragraph 31 of this Sublease/License.

b. **Rate Study.** Upon receipt of the notice, the City shall cause a rate study to occur to determine the fair market rental for the extended term of the lease. The results of the said study shall determine the rental for the extended period of the lease.

c. **Length of Extension.** Upon exercise of an option to extend, the term may be extended as permitted under the terms of this Sublease/License for two (2) additional five (5) year periods consisting of annual terms matching Licensee's fiscal year.

d. **Terms and Conditions.** Except for the rental rate determined by the rate study, the remaining terms and conditions of this Sublease/License shall be in full force and effect during the extension period.

8. **EQUIPMENT TO BE ATTACHED.** Licensee may attach to the antenna and structures only the equipment, connectors, conduits, and line expressly set out in **Exhibit A** (the "agreed equipment"). Said agreed equipment shall be installed in accordance with the plans and specifications set out in **Exhibit A**. The City may require that Licensee submit an interference study to the City demonstrating that the agreed equipment will not cause interference with existing and contemplated equipment to use the premises. Licensee may not use the premises for any other purpose.

9. **FACILITY FEE; RENT; ADDITIONAL RENT; OTHER CHARGES.** Licensee agrees to pay the City, and where indicated third parties, fees, rent, additional rent and other charges as follows:

a. **SERS Siting Fee.** Licensee agrees to pay a siting fee to SERS in an amount set out in the General Terms and Conditions to the Master Lease, which is Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00).

b. **City Siting Fee.** Licensee agrees to pay a siting fee to the City in the amount of **TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00)** within thirty (30) days of the full execution of this License. Said fee shall be paid upon execution of this Sublease/License.

c. **Annual Base Rent.** Commencing on the Commencement Date, Licensee shall pay the City annual base rent in the amount of **EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00)**. Base rent for the initial term shall be paid within thirty (30) days of commencement of the initial term. Thereafter annual base rent shall be due and payable within thirty days (30) of the expiration of each fiscal year. Should the City allow Licensee to add to or change the equipment to be attached, any agreement addressing the addition to or change of equipment shall address adjustment of the annual base rent and any pro-ratio to account for additions or changes in the middle of a lease year.

d. **Adjustment of Annual Base Rent.** The annual base rent shall be adjusted beginning with the lease year commencing on the third anniversary of the commencement date. Said increase shall be a 2.5% increase.

e. **Insurance Cost.** If as a result of this Sublease/License the City's cost for any insurance shall increase, the City shall invoice Licensee for the increased cost on the anniversary of the commencement date. Licensee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent.

f. **Utilities Cost.** If all of the utilities to Licensee's equipment and facilities are not separately metered and billed to Licensee, but the said utility is billed to the City and increases the City's cost for utilities, the City shall invoice Licensee for the increased cost on the anniversary of the commencement date. Licensee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent.

g. **Tax Imposed on the City.** Should any tax be imposed on the City for or on account of this Sublease/License, or the City's receipt of payments under this Sublease/License, upon the City's payment of said tax, the City shall invoice Licensee for the tax imposed upon the City. Licensee shall pay the City's invoice within thirty (30) days of the postmark on the City's mailing of the invoice. Said reimbursement shall be deemed to be additional rent.

h. **No Offset.** All charges under this lease are charges for rent. Tenant shall pay all rent under this lease without offset.

10. **INTEREST.** In addition to all other charges, in the event a payment is not paid when due, Licensee shall pay to the City interest at the rate of twelve percent (12%) per annum.

11. **TAXES.** Licensee shall pay all taxes associated with this Sublease/License.

12. **USE OF THE CONNECTION AND STORAGE AREAS.**

a. **Installation.** Licensee may use the connection and storage areas to install, maintain and operate the agreed equipment. This use shall be nonexclusive. Installation shall be done under the supervision of the City or its designee. The City may forbid installation of any material, even if part of the agreed equipment, if in the City's sole judgment, reasonably exercised, the material will damage the property or interfere with the rights of SERS, the City, or any present or prospective co-locator. All expenses of installation of Licensee's equipment shall be at the sole cost and expense of Licensee. Licensee shall paint the color of its facilities as the City may direct.

b. **Compliance With Law; Waste.** Licensee shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation, and safety) in connection with the use, operation, maintenance, construction and/or installation of equipment and use of the premises. Licensee shall not permit, and shall not cause waste upon the premises.

c. **Removal.** The Licensee shall remove its equipment and materials from the premises upon the termination of this Sublease/License at its own expense. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the premises, including that of SERS, the City, or any co-locator. If, however, Licensee requests permission not to remove all or a portion of its equipment and materials, and the City consents to such non-removal, title to the affected equipment and materials shall thereupon transfer automatically as of the date of the request to the City and the same shall thereafter be the sole and entire property of the City and Licensee shall be relieved of the duty to otherwise remove the same. If Licensee is required to remove its materials and equipment, Licensee shall restore the affected area of the premises to the reasonable satisfaction of the City. All costs and expenses of removal and restoration shall be borne by Licensee and to the extent permitted by applicable Federal Law, Licensee shall hold the City harmless from any portion thereof.

13. **EQUIPMENT AND MATERIALS UPGRADE.** Licensee may not replace or alter its materials, installation, and equipment without the agreement of the City, including any required agreement for the adjustment of the annual base rent.

14. **MAINTENANCE.**

a. Licensee shall, at its own expense, maintain any equipment on or attached to the premises in a safe condition, in good repair, and in a manner suitable to the City so as not to conflict with the use of or other leasing of the premises by the City. Licensee shall not interfere with the use of the antenna, the premises, related facilities, or other equipment of SERS and any co-locators.

b. Licensee shall have sole responsibility for the maintenance, repair, and security of its equipment and personal property and sub-leasehold improvements, and shall keep the same in good condition and repair during the sublease/license term.

c. Licensee shall keep the premises free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.

d. Should the City, SERS, or a co-locator undertake painting, construction, or other alterations on the antenna, Licensee shall take reasonable measures at Licensee's sole cost to cover and/or protect Licensee's equipment, personal property, or materials.

15. **LIENS.** Licensee acknowledges that the City and the premises may not, and shall not, be subject to claims for liens for labor and materials, and shall keep the premises and any other property of the City free from any liens for work, labor, materials, or services delivered to Licensee, or claimed by or through Licensee. To the extent and manner provided by Federal Law, Licensee shall indemnify, defend, and hold the City harmless from and against any such claims or liens and the City's attorney's fees and costs incurred in connection therewith.

16. **PREMISES ACCESS.**

a. Licensee at all times during this Sublease/License, subject to notice requirements to the City as set out below, and subject to rules that SERS and/or the City may from time to time implement and issue, shall have vehicle access through existing gates and driveways to the antenna and premises.

b. Licensee shall request access to the premises twenty-four (24) hours in advance, except in an emergency. All access requests will be made to and coordinated by the City's Fleet & Facilities Manager. In the case of an emergency, the City's Stand-by personnel will provide access to the facility.

c. The City may at all times enter upon those portions of the premises occupied by Licensee to examine and inspect the premises for safety and to ensure that the Licensee is complying with the provisions of this Sublease.

17. **UTILITIES.** Unless separate metering is not available, Licensee shall arrange for separate metering of its utilities associated with its use as permitted by this Sublease/License. Licensee shall pay all costs associated with arranging for said metering and Licensee shall pay all utility charges as and when they come due. Licensee may not install an emergency power generator or alternate power system on the premises without the consent of the City. The City in its sole discretion may refuse to grant consent. Should the City consent, and an emergency generator or alternate power system is installed by Licensee, the system shall conform to all fire prevention regulations of the fire district, all requirements of the Public Utility District No. 1 of Snohomish County, and all regulations of any other agency with jurisdiction. The City shall not be liable for the interruption of utility services or failure of emergency power or any damages or losses resulting from such interruption or failure.

18. **LICENSE FEES.** Licensee shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and permits required for or occasioned by Licensee's use of the premises, if any.

19. **INTERFERENCE.** Licensee's installation, operation, and maintenance of the agreed equipment shall not damage or interfere in any way with SERS's operations, the City's operations or the operation of other co-locators. Licensee agrees to immediately cease upon actual notice activities which materially interfere with other operations. The City at all times during this Sublease/License reserves the right to take any action it deems necessary in its sole discretion to repair, maintain, alter or improve the premises.

The City may at any time obtain an interference study to determine if Licensee's activities interfere with the use and operation of other communication facilities on the antenna which pre-existed Licensee's agreed equipment. If Licensee's agreed equipment causes interference, Licensee shall take all measures reasonably necessary to correct and eliminate the interference and reimburse the City the cost of the interference study. If the interference cannot be eliminated in a reasonable time, Licensee shall immediately cease operating its equipment until the interference has been eliminated. If the interference cannot be eliminated within thirty (30) days, the City may terminate this Sublease/License.

The City may receive requests to sublease to co-locators. If after installation of Licensee's agreed equipment the City proposes to enter into a sublease with a co-locator, the City will advise Licensee of the proposal, and the City will supply Licensee with such information as the third party will provide for review for noninterference. Licensee shall have thirty (30) days to review and comment on the information supplied. If Licensee does not object in writing within the said thirty (30) days, then Licensee shall be deemed to have consented to the co-location and shall be conclusively deemed to have agreed that the proposal will not cause interference with Licensee's agreed equipment and operation. If Licensee timely objects, and the City verifies the objection, the City will not proceed with the proposal, unless the proposal is reasonably modified to avoid interference.

Notwithstanding the provisions of the previous paragraph, the City does not guarantee to Licensee subsequent noninterference with Licensee's agreed equipment. Further, regardless of the provisions of the previous paragraph, the City itself, SERS, or any governmental unit may be allowed to operate or place facilities on the antenna regardless of actual or potential interference

with Licensee's use. In such event, Licensee may terminate this sublease on thirty (30) days notice to the City.

20. **INDEMNIFICATION / HOLD HARMLESS.** Licensee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Licensee's use of Premises, or from the conduct of Licensee's business, or from any activity, work or thing done, permitted, or suffered by Licensee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

21. **INSURANCE.**

a. Insurance Term. The Licensee shall procure and maintain for the duration of this Sublease/License, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Licensee's operation and use of the leased Premises.

b. No Limitation. Licensee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

c. Minimum Scope of Insurance. Licensee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as additional an insured on Licensee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.
2. Property insurance shall be written on an all risk basis.

d. Minimum Amounts of Insurance

Licensee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
2. Property insurance shall be written covering the full value of Licensee's property and improvements with no coinsurance provisions.



e. Other Insurance Provisions. The Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to claims caused by Licensee's negligence. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Licensee's insurance and shall not contribute with it.

f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-: VII.

g. Verification of Coverage. Licensee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Licensee.

h. Waiver of Subrogation. Licensee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

i. City's Property Insurance. City shall purchase and maintain during the term of the Sublease/License all-risk property insurance covering the Building for its full replacement value without any coinsurance provisions.

j. Notice of Cancellation. The Licensee shall provide the City with written notice of any policy cancellation within thirty (30) days of their receipt of such notice.

k. Failure to Maintain Insurance. Failure on the part of the Licensee to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days notice to the Licensee to correct the breach, terminate this Sublease/License or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

22. **RELEASE OF CLAIMS.** Licensee hereby releases the City for all claims for damages which may arise from defects in the antenna and related structures on the premises, or which may arise from the existing or future water storage tank and appurtenances on the premises, or for damage by storm, rain, leakage or any natural occurrence.

23. **HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.**

a. **Definitions.** "Hazardous Materials" as used in this Sublease shall mean:

i. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease producing substances; or

ii. Any dangerous waste or hazardous waste as defined in:

(a) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105);

(b) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq); or

iii. Any hazardous substance as defined in:

(a) Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (43 U.S.C. Sec. 9601 et seq); or

(b) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

iv. Any pollutants, contaminants or substances posing a danger or threat to public health, safety or welfare or to the environment, which are regulated or controlled as such by applicable federal, state or local laws or regulations as now existing or hereafter amended.

b. **Environmental Compliance.**

i. In the use and occupancy of the Premises, the Licensee shall, at the Licensee's own expense, comply with all federal, state, and local laws and regulations, now or hereafter in effect, related to hazardous materials and the environment which are applicable to the Premises, Licensee's business, or any activity or condition Licensee conducts on or about the premises (the "Environmental Laws"). The Licensee warrants that its business and all its activities to be conducted or performed in or about the premises shall comply with all of the Environmental Laws. The Licensee agrees to change, reduce, or stop any noncomplying activity or to install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this sublease to comply with the Environmental Laws.

ii. The Licensee shall not, without first obtaining the City's prior written approval, use generate, release, handle, spill, store, treat, deposit, transport, sell, or dispose of any hazardous materials in, on, or about the premises. In the event, and only in the event, that the City approves any of the foregoing, the Licensee agrees that such activity shall occur safely and in compliance with the Environmental Laws.

iii. The Licensee shall not cause or permit any violation of the Environmental Laws on, under, or about the premises, or arising from the Licensee's use or occupancy of the Premises.

iv. The Licensee, at its own expense, in a timely manner shall make all reports, including self reports, and supply all submissions required to comply with all Environmental Laws. If the Licensee shall fail to fulfill this duty, at its option the

City may fulfill such reporting requirements, and bill the cost thereof to Licensee as if the same was additional rent, or the City may employ the default provisions of this Sublease. All of the City's remedies shall be cumulative, and the exercise of one remedy shall not be deemed to be a waiver or release of any other remedy. Licensee's environmental obligations shall survive a termination of this Sublease.

v. Should any governmental or regulatory authority demand that a cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any action of Licensee whereby a deposit, spill, discharge, or other release of hazardous materials occurs during the term of this Sublease/License, then Licensee shall, in a timely manner and at the Licensee's own expense, prepare and submit the required plans and all related bonds and other financial assurances and Licensee shall then carry out all such cleanup and remediation plans at its own expense. Any such cleanup and remediation plans are subject to the City's prior written approval. Although the City reserves the right to review and approve such cleanup and remediation plans, the City assumes no responsibility for such plans or their compliance with the environmental laws.

c. **Environmental indemnity.** To the extent and in the manner provided by law, the Licensee shall be fully and completely liable to the City for, and shall fully save and indemnify the City from, any and all cleanup and/or remediation costs and expenses and any and all other charges, expenses, fees, penalties (civil and criminal) imposed by any governmental or regulatory authority arising out of the Licensee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit, and/or sale of hazardous materials on or about the Premises. In addition, Licensee shall indemnify and save the City harmless from any and all claims, liabilities, lawsuits, damages and expenses, including reasonable attorney's fees for injuries to persons or death, property damage, loss or costs caused by the Licensee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit, and/or sale of hazardous materials by the Licensee. For the purposes of this paragraph, "Licensee" shall be construed to mean Licensee, or any of its agents, representatives, employees, or contractors. This indemnity shall survive the termination of this Sublease/License.

d. **Remediation on Lease/License Termination.** Upon expiration or earlier termination of this Sublease/License, Licensee shall remove, remediate, or clean up any hazardous materials on or emanating from the premises, occasioned by Licensee, and Licensee shall undertake whatever other action may be necessary to therefore bring the premises into full compliance with environmental laws. Licensee shall submit its plan of cleanup to the City for review and approval. Notwithstanding review and approval by the City, the City assumes no responsibility for any plan of cleanup, or for Licensee's compliance with environmental laws. If Licensee does not timely proceed with a plan of cleanup, the City may supply Licensee with a notice of default, and if within the deadline specified in the notice, Licensee does not make reasonable progress, the City thereafter may proceed with cleanup as necessary and bill all of the City's costs, including costs of investigation and reporting, to Licensee.

24. **NON-DISCRIMINATION.** The City and Licensee shall not discriminate on the basis of race, color, sex, religion, nationality, creed, age or the presence of any sensory, mental or physical disability in the employment or application for employment in the administration or delivery of services or any other benefits associated with this Sublease. The parties shall comply with all laws against discrimination including but not limited to Chapter 49.60 RCW and Titles VI and VII of the Civil Rights Act of 1964.

25. **SIGNS.** No advertising shall be permitted on the premises except as required by law or regulation. Licensee may post its name, address and an emergency number on a sign, provided Licensee and the City shall agree as to the size and location of the sign.

26. **DEFAULT AND TERMINATION FOR DEFAULT.** It shall be a default if Licensee fails to fully and timely make any payment under this Sublease/License or fails to fully and timely perform as required by this Sublease/License. In the event of a default, the City may give Licensee a notice of default as follows:

- a. for nonpayment of rent, a ten (10) day notice to pay or vacate;
- b. for any other nonperformance under the lease a twenty (20) day notice to comply or vacate.

If Licensee does not pay or cure its performance within the deadline specified by the notice the City, at its option, may without further notice re-enter the premises and eject Licensee from the premises. At its option, the City may also (1) declare in writing the Sublease/License terminated, in which event Licensee shall immediately remove the agreed equipment from the premises and pay the City a sum of money equal to the total amount of unpaid rent accrued through the date of termination, the amount of rent remaining to be paid on the Sublease/License reduced by that amount the Licensee proves could have been reasonably mitigated, and the City's costs, including reletting costs and reasonable attorney's fees, or (2) without terminating this Sublease/License, relet the premises, or any part thereof, for the account of the Licensee upon such terms as the City deems advisable, and if a deficiency remains compared to the reserved rent and the City's reletting costs and reasonable attorney's fees, and invoice and collect the shortage from sublessee, or (3) pursue any other remedy permitted at law or in equity.

No re-entry and taking possession of the Premises by the City shall be construed as an election on the City's part to terminate this Sublease/License, regardless of the extent of renovation or alterations by the City, unless the City declares in writing that this Sublease is terminated. Notwithstanding any reletting without termination, the City may at any time thereafter elect to terminate this Sublease/License for such previous breach.

27. **COSTS AND ATTORNEY'S FEES.** If a legal or equitable action is instituted by reason of any default or breach of this Sublease/License, or because of a dispute concerning the terms and provisions of this Sublease/License, to the extent and the manner provided by law, the prevailing party shall be entitled to recover all of its legal costs, expert witness and consultant fees, and reasonable attorney's fees.

28. **VENUE AND CHOICE OF LAW.** This Sublease shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be in Snohomish County.

29. **OPTIONAL RIGHTS TO TERMINATE.** Even though no party may be in default under the terms of this Sublease/License, the City and Licensee, upon giving notice as specified, shall have optional rights to terminate this Sublease/License as follows:

- a. **Damage or Destruction.** Upon thirty (30) days written notice, one to the other, in the event that the antenna, or Licensee's agreed equipment, is substantially damaged or destroyed, either party may declare this sublease terminated.
- b. **Antenna Unsound.** Upon thirty (30) days written notice from the City to Licensee, in the event that the antenna, as determined by the City in its sole discretion, is determined to be structurally unsound or otherwise not suitable for Licensee's use.
- c. **Redevelopment.** Upon thirty (30) days written notice from the City to Licensee, in the event that the City determines, in its sole discretion, that the property should be redeveloped.
- d. **Health Hazard.** Upon thirty (30) days written notice from the City to Licensee, in the event that the City determines, in its sole discretion, that the continued use of the antenna and related equipment is in fact an immediate threat to the health, safety, or welfare of local community. Except that the City may not take any action that conflicts with the Federal Telecommunications Act and its implementing regulations, including but not limited to 47 U.S.C. §332(c)(7), 47 C.F.R. 1.1307(b), 1.1310, 2.1091, and 2.1093.

30. **ASSIGNMENT OR SUBLEASE.**

a. **Prohibited Without Consent.** Licensee shall not assign or transfer this Sublease/License or any interest or rights therein, nor delegate its duties under this Sublease/License, nor sub-sublease/license the whole or any part of the premises, nor grant an option for assignment, delegation, transfer or sub-sublease/license for the whole or any part of the premises, nor shall this Sublease/License or any interest thereunder be assignable, delegable, or transferable by operation of law, or by any process or proceeding of any court or otherwise without obtaining the prior written consent of the City. If the City gives its consent to any assignment, delegation, sub-sublease, or other transfer, the same shall not be a waiver, and this paragraph shall nevertheless continue in full force and effect, and no further assignment, delegation, sub-sublease, or other transfer shall be made without the City's consent. All prohibited events under this paragraph are hereinafter referred to as "transfers," or "transfer." The foregoing notwithstanding, Licensee shall be allowed to assign to an affiliated entity or an entity that gains more than 51% control of Licensee with notice to the City.

b. **Notice by Sublessee/Licensee – Production of Records.** If Sublessee/Licensee desires to transfer this Sublease/License, Licensee shall notify the City in writing of said desire to transfer at least ninety (90) days prior to the effective date

of the proposed transfer. The notice shall specify the date of the proposed transfer, the identity of the transferee, and the terms of the proposed transfer, including all consideration of any kind to be received by the licensee. Upon request by City, licensee shall provide:

- i. a full and complete financial statement of the proposed transferee;
- ii. a copy of the proposed transfer instrument;
- iii. an affidavit from the transferee that it has examined the Master Lease, and all accompanying schedules and exhibits, and has examined this Sublease/License, has had an opportunity to consult with legal counsel, and understands the terms and conditions under which a transfer will be undertaken; and
- iv. any other information the City reasonably requests.

c. **Decision by the City.** The City shall review the request to transfer and respond with either an approval or disapproval not later than sixty (60) days prior to the effective date of the proposed transfer. Disapproval shall be final and binding on the Licensee and shall not be subject to litigation or appeal. The City shall charge Licensee reasonable fee for administrative costs for the review and processing of a transfer. Said fee shall be due and payable upon invoice from the City to Licensee.

d. **Effect of Transfer.** Should the City consent to a transfer, the transferee shall be fully bound to this Sublease/License and the Master Site Lease. Despite consent by the City and a permitted transfer, Licensee and any subsequent transferor shall not be released, but shall also be fully bound to and obligated to payment and performance under this Sublease/License.

31. **NOTICES.** Except for notices required under Chapter 59.12 RCW, notices required under this Sublease/License shall be given in writing to the following respective addresses, effective as of the postmark time and date, or to such other place as may hereafter be designated by either party in writing:

- a. if to City, to:

The Chief Administrative Officer City of Marysville  
1049 State Avenue  
Marysville, WA 98270

- b. if to Licensee, to

T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attention: Lease Compliance/SE01890A

32. **HOLDING OVER.** If Licensee holds over after the expiration of the term of this Sublease or any extension thereof, Licensee, if the Master Site Lease has not expired, shall

become a subtenant from month to month upon the terms of this Sublease/License as applicable. Acceptance by the City of rent after such expiration or early termination shall not result in a renewal of this Sublease/License, or waiver of any early termination, and shall not affect the City's right of reentry or any other rights the City may have. If Licensee fails to surrender possession of the premises upon expiration of this Sublease/License, despite demand to do so, as provided for by law, Licensee shall pay two (2) times the rent herein specified (prorated on a monthly basis), interest, attorney's fees and costs as specified in this Sublease/License.

33. **NO PRESUMPTION AGAINST DRAFTER.** Licensee and City agree that this Sublease/License has been freely negotiated by the parties, and in the event of any dispute concerning the meaning or interpretation of the terms and conditions of this Sublease/License, there shall be no inference, presumption or conclusion drawn against the City for or on account that the City or its legal counsel have prepared this Sublease/License.

34. **CAPTIONS.** The captions of this Sublease/License are for convenience only and do not in any way limit or amplify the provisions of this Sublease/License.

35. **AUTHORITY.** Licensee covenants and represents that it has full authority and power to execute this Sublease/License, and that by execution of this Sublease/License it will not violate any provision of law or contract and that Licensee will be fully bound to full payment and performance under the terms of this Sublease/License.

36. **CUMULATIVE REMEDIES.** No provision of this Sublease/License shall preclude the City from pursuing any other remedies the City may have for or on account of Licensee's failure to perform its obligations.

37. **NONWAIVER.** The failure of the City to insist upon strict performance of the terms of this Sublease/License shall not be construed as a waiver by the City of strict performance. Waiver of a particular default shall not be deemed to be a waiver of any subsequent breach or default.

38. **SURRENDER OF PREMISES.** At the end of the term of this Sublease/License, besides performance of specific removal and remediation covenants provided for elsewhere in this Sublease/License, and subject to those covenants, Licensee shall peaceably deliver up to the City possession of the premises in the same condition as received, except for ordinary wear and tear.

39. **INTEGRATION; FULL AGREEMENT.** This Sublease/License is intended as a full and final expression of the agreement between the parties. All prior discussions, statements, representations, and warranties are integrated and merged into this agreement. There are no agreements between the parties, and there are no representations on which either party relies except as set forth in this Sublease/License.

DATED: \_\_\_\_\_

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, Mayor

ATTEST:

By \_\_\_\_\_  
APRIL O'BRIEN, City Clerk

Approved as to form:

By \_\_\_\_\_  
JON WALKER, City Attorney

DATED: \_\_\_\_\_

LICENSEE:

T-Mobile West LLC

By \_\_\_\_\_  
Its \_\_\_\_\_